

## COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

TRIAL COURT OF THE  
COMMONWEALTH  
SUPERIOR COURT DEPT.  
HAMPDEN DIVISION  
INDICTMENT NO. [REDACTED]

Commonwealth

v.  
[REDACTED]DEFENDANT'S MOTION TO COMPEL

Now comes the defendant and respectfully requests that this Honorable Court issue an order, pursuant to Mass. R. Crim. P. 14(a)(1)(A) and/or Mass. R. Crim. P. 14(a)(2), compelling the production of the following evidence:

1. *Case File*: The exact type and nature of any and all tests and examinations conducted by analysts or assistant analysts at the Department of Public Health State Laboratory Institute (the "Laboratory") in this case; this request encompasses names of the analysts or assistant analysts who conducted said tests/examinations, as well as copies of any and all notes, memorandums, graphs, photographs, sketches, spectras, relating to each and every test conducted at the Laboratory;
2. *Reagent Solution*: The type and amount of reagent solution(s) used in conducting any spot and/or microcrystal test(s) on the alleged controlled substances;
3. *Drug Testing Equipment*: The brand(s) and model(s) of any equipment used in conducting tests on the alleged controlled substances;
4. *Calibration Evidence*: Copies of any Laboratory procedures for calibrating and maintaining drug testing equipment and copies of calibration and maintenance records for said equipment from December 1, 2011 – February 1, 2012, including the date(s),

time(s), and name of the individual(s) who calibrated and/or maintained said equipment;

5. *Equipment Usage*: The exact number and times of tests conducted on said equipment on December 20, 2011, December 22, 2011, and January 9, 2012;
6. *Infrared Spectra(s)*: The infrared spectra(s) used by Laboratory personnel in comparing the spectra resulting from any tests of the alleged controlled substances;
7. *Standard Spectras*: Copies of the standard spectras used by Laboratory personnel in comparing the spectras resulting from the tests of the alleged controlled substances and copies of the actual spectras produced by the tests;
8. *Laboratory Policies*: Any and all written policies adopted and/or promulgated by the Laboratory regarding the number, types and procedures for the testing of alleged controlled substances;
9. *Molecular Models*: Copies of the standard molecular models from the atomic bands produced by any Fourier transform infrared spectroscopy ("FTIR) or Gas chromatography-Mass spectrometry ("GC-MS") instruments used in the testing of compounds in this case;
10. *Statistical Measuring Process*: The statistical measuring processes employed by analysts or assistant analysts in the visual comparison of the spectra produced by any FTIR and GC/MS instruments in this case;
11. *Confidence Level*: The confidence level/limits of the hypotheses involved in the FTIR and GC/MS testing procedures;
12. *Independent Validation Techniques*: A list of all the independent validation techniques used by the analysts or assistant analysts to verify or validate the conclusions reached from the tests conducted;
13. *Other Data*: A list of all other data used in comparing the spectras produced by FTIR and/or GC/MS instruments;
14. *Error Rate*: The error rate of the instruments used to conduct any testing;

15. *Computerized Spectral Library*: Whether any of the testing equipment used had an attached computerized spectral library and whether that the computer library was used for comparison; if so, then production of the computer printouts as to all potential matches found by the computer library; if such computerized comparisons were not done, then an explanation as to why;
16. *History of Analyst Discipline*: Whether the analyst(s) or assistant analyst(s) who conducted tests on the substance(s) at issue had ever been disqualified from testing as an expert in drug identification in any jurisdiction;
17. *Laboratory Training Guidelines*: A copy of all Training Guidelines for analysts or assistant analysts who test substances at the Laboratory;
18. *Quality Assurance*: Copies of Quality Assurance Manuals utilized by the Laboratory;
19. *Chain of Custody*: Copies of all records that document the treatment and handling of evidence in this case, from the initial point of collection up to the current disposition;
20. *Documentation of Discrepancies and Errors*: Any and all Laboratory records documenting substantive, clerical, or administrative errors committed by the Laboratory personnel during the process of testing purportedly controlled substances since 2007, including: (i) the name(s) of the case(s); (ii) the name(s) of the analyst(s) or assistant analysts involved; (iii) the reported cause(s) of the error(s); and (iv) the resolution(s) of the case(s);
21. *Corrective Action Policies*: A copy of the Laboratory's policies, procedures and criteria for the taking of corrective actions;
22. *Documentation of Corrective Actions for Discrepancies and Errors*: A copy of all documentation of corrective actions maintained by the Laboratory;
23. *Accreditation*: Copies of all licenses or other certificates of accreditation in controlled substance analysis held by the Laboratory;
24. *Laboratory Personnel*: Background information about each person involved in conducting, reviewing or verifying the controlled substance analysis performed in this case, including: (i) current

resume; (ii) job description; (iii) all proficiency test results; (iv) all testimony reviews; (v) membership in any professional organizations associated with the analysis of controlled substances; (vi) professional papers published; and (vii) teaching positions held;

25. *Evidence Audits*: A copy of any Laboratory policies regarding the periodic audits of all evidence within the Laboratory's control;
26. *Proficiency Testing*: Copies of any Laboratory proficiency testing policies or documentation delineating the type of proficiency testing utilized by the Laboratory and how often it must be completed;
27. *Continuing Education*: Copies of any Laboratory policies outlining the educational opportunities afforded analysts and/or assistant analysts and documentation tracking the requests for or attendance at continuing education events by any of the individuals who analyzed the substances at issue in this case;
28. *Identity of Police Officer Expert(s)*: Names of any and all law enforcement officers prepared to offer opinion testimony regarding the identity of the substances purportedly possessed and/or distributed by the defendant and/or his co-defendants based on the officer's or officers' visual observation(s);
29. *Police Officer Expert Academy Training*: A summary of the training received by such officer(s) at the Police Academy with regard to the visual identification of heroin and/or cocaine;
30. *Police Officer Expert Training Beyond Academy*: A summary of any further training received by such officer(s) with regard to the visual identification of heroin and/or cocaine;
31. *Police Officer Expert Education*: Whether such officer(s) has/have a bachelor's of science in chemistry or biology or a master's of science in biochemistry, chemistry or forensic science – if not, what training such officer(s) has/have had in chemistry;
32. *Police Officer Expert Forensic Training*: What training, if any, such officer(s) has/have had in forensic science (e.g., training to conduct a variety of tests for drugs, make extractions, use GC/MS instruments or equipment; training to properly document steps taken and findings, etc.)

33. *Police Officer Expert Recent Arrests:* The names and charges and/or docket numbers or police reports related to arrests, in the twelve months prior to the defendant's arrest, by such officer(s) for the possession, possession with intent, or distribution of heroin and/or cocaine;
34. *Police Officer Expert Interaction with Crime Lab:* The total number of times such officer(s) has/have submitted substances believed to be heroin and/or cocaine to the crime laboratory for analysis;
35. *Police Officer Expert Track Record with Crime Lab:* The total number of times the analysis revealed that the substance in question was something other than heroin and/or cocaine;
36. *Complaint Amendments:* The total number of cases involving such officer(s) where a complaint has been amended to reflect: (i) a different controlled substance than the controlled substance upon which the arrest was originally based; or (ii) distribution of a counterfeit substance;
37. *Police Officer Expert Error Rate(s):* The error rate(s) of such officer(s), (e.g., how many times such officer(s) has/have been wrong; documentation related to the officer or officers' experience with heroin and/or cocaine);
38. *Police Officer Expert Use of Heroin and/or Cocaine:* Whether such officer(s) has/have ever personally used heroin and/or cocaine;
39. *Drug Tests:* Whether such officer(s) has/have ever had a positive finding of a drug as a result of drug test administered by a law enforcement agency;
40. *Prior Expert Testimony:* The captions and docket numbers of any cases where such officer(s) was/were certified as an expert and/or permitted to give opinion testimony;
41. *Scientific Basis for Opinion:* The scientific theory or theories upon which such officer(s) relies/rely as the basis for the opinion that the substance in question was heroin and/or cocaine;
42. *Identity of Field Tester(s):* Names of any and all law enforcement officers who field tested the substances purportedly possessed and/or distributed by the defendant and/or his co-defendants;

43. *Field Testing Academy Training*: A summary of the training received by such officer(s) at the Police Academy with regard to field testing substances believed to contain heroin and/or cocaine;
44. *Field Testing Training Beyond Academy*: A summary of any further training received by such officer(s) with regard to field testing substances believed to contain heroin and/or cocaine;
45. *Color-blindness*: Whether such officer(s) is/are color blind;
46. *Field Testing Products*: The name(s), type(s), brand(s), make(s) and/or model(s) of any field testing products or kits utilized in this case;
47. *Field Testing False-Positive Rate*: The false-positive rate for any field testing products or kits utilized in this case;
48. *Field Testing User's Manual*: A copy of the user's manual(s) for any field testing products or kits utilized in this case;
49. *Field Testing Process*: A summary of the process by which substances were field tested in this case;
50. *Field Testing Kit Storage*: A description of the manner in which the field test products or kits were stored prior to application;
51. *Field Testing Temperatures*: The temperature(s) at application of the field tests in question;
52. *Treatises and/or Reference Books*: Notice of all treatises and/or reference books upon which any expert witnesses will be relying;
53. *Firearms Identification Section Case File*: The exact type and nature of any and all tests and examinations conducted by so-called "Ballistics Experts" at the Western Division of the State Police Firearms Identification Section; this request encompasses names of all persons who conducted, or were present for, said tests/examinations, as well as copies of any and all notes, sketches, worksheets, memoranda, photographs, and/or videos relating to each and every test conducted;
54. *Examination and Test Firing Policies*: Any and all written policies adopted and/or promulgated by the Firearm Identification Section regarding the procedures for examining and test firing suspected firearms and ammunition;

55. *History of Ballistic Expert Discipline:* Whether the Ballistic Expert(s) who conducted tests and examinations in this case has/have ever been disqualified from testing as a ballistics expert in any jurisdiction;
56. *Training Guidelines:* A copy of all Training Guidelines for personnel who test fire and examine suspected firearms and ammunition;
57. *Chain of Custody:* Copies of all records that document the treatment and handling of the suspected firearm and ammunition in this case, from the initial point of collection up to the current disposition;
58. *Documentation of Discrepancies and Errors:* Any and all Firearms Identification Section records documenting substantive, clerical, or administrative errors committed by personnel during the process of testing suspected firearms and/or ammunition since 2007, including: (i) the name(s) of the case(s); (ii) the name(s) of the ballisticians involved; (iii) the reported cause(s) of the error(s); and (iv) the resolution(s) of the case(s);
59. *Corrective Action Policies:* A copy of the Firearms Identification Section policies, procedures and criteria for the taking of corrective actions;
60. *Documentation of Corrective Actions for Discrepancies and Errors:* A copy of all documentation of corrective actions maintained by the Firearms Identification Section;
61. *Accreditation:* Copies of all licenses or other certificates of accreditation in test firing and/or examining suspected firearms and ammunition held by the Firearms Identification Section;
62. *Laboratory Personnel:* Background information about each person involved in conducting, reviewing or verifying the testing firing and/or examinations performed in this case, including: (i) current resume; (ii) job description; (iii) all proficiency test results; (iv) all testimony reviews; (v) membership in any professional organizations associated with ballistics; (vi) professional papers published; and (vii) teaching positions held;
63. *Evidence Audits:* A copy of any policies regarding the periodic audits of all evidence within the Firearms Identification Section's control;

64. *Proficiency Testing*: Copies of any proficiency testing policies or documentation delineating the type of proficiency testing utilized by the Firearms Identification Section and how often it must be completed;
65. *Continuing Education*: Copies of any policies outlining the educational opportunities afforded ballisticians and documentation tracking the requests for or attendance at continuing education events by any of the individuals who examined or test fired objects in this case; and
66. *Treatises and/or Reference Books*: Notice of any and all treatises and/or reference books upon which any ballistics expert will be relying.

As reasons therefore, the defendant states that the information at issue is essential to afford him the opportunity to prepare his defense and to confront the evidence against him, specifically the testimony of police officers, chemists, assistant chemists, or lab technicians who conducted drug analyses in this case, as well as the officers who orchestrated purported undercover purchases of substances alleged to be cocaine. *See Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527 (2009). This information is also necessary in order to provide effective assistance of counsel at trial. *See* Sixth and Fourteenth Amendments, U.S. Constitution; Articles XI and XII, Massachusetts Declaration of Rights.

The Court is referred to the Affidavit and Memorandum of Law in Support of this Motion, filed herewith, for further reasons and argument in support of this Motion. The defendant respectfully requests a hearing on this motion.

THE DEFENDANT

By \_\_\_\_\_  
His Attorney  
Luke Ryan, Esq.  
SASSON, TURNBULL, RYAN & HOOSE  
100 Main Street, 3<sup>rd</sup> Floor  
Northampton, MA 01060  
(413) 586-4800  
BBO# 664999